IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEAL No 110 of 2002
TO
FIRST APPEAL No 125 of 2002

For Approval and Signature:

HON'BLE MR.JUSTICE KSHITIJ R.VYAS
and
HON'BLE MR.JUSTICE AKSHAY H.MEHTA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

THAKOR BHAVANJI JENAJI

Versus

SPECIAL LAND ACQUISITION OFFICER

Appearance:

1. First Appeal No. 110 of 2002

MR AJ PATEL for Petitioner No. 1

MR KT DAVE, AGP for Respondent No. 1

RULE SERVED for Respondent No. 2

CORAM : HON'BLE MR.JUSTICE KSHITIJ R.VYAS
and
HON'BLE MR.JUSTICE AKSHAY H.MEHTA

Date of decision: 03/09/2003

ORAL JUDGEMENT

(Per : HON'BLE MR.JUSTICE AKSHAY H.MEHTA)

1. This group of First Appeals is filed by the original claimants i.e. owners of agricultural lands acquired by the respondents for the public purpose, namely Narmada Canal Project, Dholka Branch. These lands are agricultural lands and they are situated at village Santej in Kalol Taluka of District Mehsana.

1.1. The Special Land Acquisition Officer, respondent no. 1 herein, for the purpose of acquiring these lands, issued notification u/S. 4 of the Land Acquisition Act (hereinafter referred to as 'the Act') on 21st February, 1992 and notification u/S. 6 of the Act on 11th August, 1992. The claimants i.e. appellants were issued necessary notice for lodging objections if they so desired and also for granting personal hearing to them. After hearing them and complying with all the required formalities under the Act, the Special Land Acquisition Officer i.e. respondent no. 1 made awards on 24th March, 1994 and 25th March, 1994. Respondent no. 1 awarded Rs.3/= per sq. mtr. for irrigated land and Rs.2/= per sq. mtr. for non-irrigated land. It may be noted here that the claim of the appellants was Rs.100/= to Rs.200/= per sq. mtrs.

1.2. Having been aggrieved by the award of respondent no. 1, the appellants approached the Collector with a request to make reference to the District Court u/S. 18 of the Act. In view of the same, Land Acquisition References came to be filed in the Court of learned Extra Assistant Judge at Mehsana, which were numbered as Land Acquisition Reference No. 526 of 1995 to 538 of 1995 and 520 of 1995 to 524 of 1995. All these references were consolidated and the evidence was recorded in L.A.R. No. 526 of 1995, it being the main Land Reference Case.

1.3. In the proceedings before the Reference Court, the claimant produced several documents in support of their claim as well as examined witnesses to substantiate their case. The respondents appeared in the proceedings through the learned Addl. Government Pleader and contested the claim of the appellants by filing written statement as well as producing documentary and oral evidence during the course of hearing.

1.4. On behalf of the appellants, witness Bhavanji Jenaji Thakor has been examined at Exh. 45. He has produced on record the revenue abstracts of Form No. 7/12 at Exhs. 15 to 40, previous award of village

Garodiya at Exh. 43 and judgment of Appeal at Exh. 44. Naimeshkumar Jayantilal Shah has also been examined by the appellants at Exh. 72.

1.5. As against that, respondents have also given oral evidence. On behalf of respondent no. 1 Keshavlal Madhavlal Patel has been examined and his evidence is at Exh. 74. For respondent no. 2 i.e. the Executive Engineer, Construction Division, Narmada Project one Dilipkumar Kantilal Shah has given evidence at Exh. 47. No further oral evidence has been led by the parties and their evidence is closed by submitting a pursis at Exhs. 46, 64 and 75. It appears from the record and in particular from the judgment that after closure of the oral evidence, copies of certain awards were produced in the proceedings. These awards were prior in point of time and they pertained to lands at villages Ranchrada and Vadsar. A judgment delivered in appeal by this Court in respect of acquisition of lands at village Goradiya was also produced. These documents have been exhibited at Exhs. 69, 70 and 71 respectively. Copy of yet another judgment delivered in the matters pertaining to lands at village Goradiya was produced at Exh. 42. The Anavari Patrak and village map were produced at Exhs. 59 and 60 respectively. To indicate the distance between the various places, the index map was also produced on record at Exh. 61. This map indicates distances of difference places which were comprised in command area of Dholka Branch.

1.6. Since in all these references common questions of fact and law arose, the Reference Court disposed of the same by its common judgment dated 20th February, 2001. The Reference Court after appreciating the entire evidence produced before it, oral as well as documentary, came to the conclusion that the compensation awarded by respondent no. 1 was inadequate and its upward revision was required to be made. While assessing the market value of the lands in question, the Reference Court took into consideration the oral evidence as well the judgments delivered by this Court in relation to the awards that were passed in respect of lands situated at villages Goradiya, Vadsar, Ranchrada, etc. It can be seen from the record that so far village Goradiya is concerned, the market value of the land situated in that village has been assessed at Rs.70/- per sq. mtr. for the purpose of determining the just compensation. Similarly for lands situated in village Ranchrada also the market value has been assessed at Rs.70/= per sq. mtr. and so is for the lands at Vadsar. However, the Reference Court while deciding the market value in the

present case, observed that though the prices awarded in respect of the neighbouring lands of the lands in question could be taken into consideration, the factor that would weigh with the Court would be the positive, convincing and cogent evidence regarding the price of the land in question. If such evidence is found lacking, then in the opinion of the Reference Court, all the instances regarding the market value of the neighbouring lands fall into insignificance. The Court has also given a finding to the effect that in the present case such evidence is lacking. In other words in the opinion of the Court there was no evidence on record to show that the lands in question were similar to those of villages Vadsar, Ranchrada, Garodiya, etc. In absence of such evidence it was not possible to determine the market value on par with the lands at Garodiya and other places. The Reference Court has, therefore, decided that the compensation of amount of Rs.15/= per sq. mtr. would be just and proper. The Reference Court has, therefore, awarded Rs.15/= per sq. mtr. inclusive of the amount of compensation already awarded by respondent no. 1 to the appellants with the usual rate of interest and all other permissible benefits provided under the Act.

2. Having been aggrieved by the judgment and award of the Reference Court dated 20th February, 2001, the appellants have now approached this Court by way of First Appeals u/S. 54 of the Act read with section 96 of the Code of Civil Procedure.

3. We have heard Mr. A.J. Patel, learned advocate for the appellants and Mr. K.T. Dave, Ld. AGP for respondents. Mr. Patel has submitted that looking to the nature of lands, their situation and the industrial development all around, the market value determined by the Reference Court is hopelessly inadequate and instead of Rs.15/= per sq. mtr. it ought to have assessed it at the rate of Rs.70/= per sq. mtr. He has further submitted that the very fact that the lands of surrounding villages were acquired for this very purpose at or around the same time and in their cases the compensation has been awarded at the rate of Rs.70/= per sq. mtr., in the present case also the learned Judge ought to have awarded compensation at the same rate. He has further submitted that merely because there is some distance between the village Santej and other villages, it would not cause any material difference because these are all agricultural lands having the same quality and, therefore, its market value ought to have been assessed on par with the market value of those lands. Lastly, he has submitted that in view of various decisions of this

Court in respect of the surrounding lands, the claim of appellants in these appeals of Rs.70/= per sq. mtr. is just and proper and it deserves to be accepted.

3.1. As against that, Mr. K.T. Dave, Ld. AGP has submitted that there cannot be any comparison between the lands of village Goradiya, Ranchrada, Vadsar, etc. and the present lands in as much as there was cogent and reliable evidence available with the Court in respect of those lands, however, in respect of the present lands, such evidence was lacking as observed by the Reference Court. He has further submitted that village Goradiya is actually within the limits of area under Ahmedabad Urban Development Authority; whereas the village Santej is outside it. He has also submitted that so far the overall development at Santej is concerned, it has taken place after issuance of notification u/S. 4 of the Act and, therefore, the same cannot be taken into consideration as the market value prevailing at the time of section 4 notification was required to be taken into account. He has, therefore, submitted that these appeals do not have any merit and deserve to be dismissed.

4. We have carefully gone through the entire record of the proceedings and also the various decisions on which the reliance has been placed by the learned advocate for the appellants and also the submissions made at the bar.

5. The learned advocate for the appellants has furnished to this Court additional paper book comprising various decisions of this Court, the oral evidence adduced before the Reference Court by the rival parties and other relevant documents.

5.1. As stated above, the appellants have examined Bhavanji Jenaji Thakor, the claimant of Land Acquisition Reference No. 526/1995. He has stated that his lands and the lands of other farmers which have been acquired, were adjoining to each other and they were of the same type. He has further stated that so far lands forming subject matter of L.A.R. Nos. 535/1995, 528/1995, 530/1995 and 524/1995 were concerned, they were non-agricultural lands; whereas the other lands were agricultural lands and they were being cultivated by their respective owners. He has further stated that they used to have three crops in a year and their annual income was Rs.20,000/= to Rs.25,000/= per one Vigha. He has also stated that the population of village Santej is of 7,000 approximately and the village has several facilities such as electricity light, water, telephone

exchange, hospital, Government cooperative, milk cooperative societies, the high school and banks. He has also stated that the village is connected with cities/towns like Ahmedabad, Kadi, Kalol and Sanand by tar roads and it is getting the benefit of facility of transport operated by the Ahmedabad Municipal Transport Service. He has further stated that so far the Sarkhej Gandhinagar Highway is concerned, it is at a distance of 6 KMs. from village Santej and so are the Sola High Court and Bhagwat Vidhyapith. He has also stated that there is considerable industrial development in this place and there are big manufacturing concerns such as Shah Alloys, Gujarat Rufia Gopala, Arvind Mill, etc. The famous publishers, namely Navneet Publishers also have their printing press at this place. He has categorically stated that all these industrial development had taken place before the land came to be acquired by respondent no. 1. This witness has also stated about the distances between the different villages. According to him, Ranchhodpura is a suburb of village Santej. Unali village is at a distance of about 3 to 3-1/2 KMs. from Santej and villages Jaspur and Garodiya are at the distance of 5 KMs. from here. He has also in no uncertain term stated that the lands of all these villages are similar. He has further submitted that so far Santej is concerned, it is closure to Ahmedabad than the other villages like Garodiya and Jaspur. In the cross-examination on behalf of respondent no. 2, the witness has stated that it was true that Santej was not within the area under AUDA. He has, however, denied the suggestion made to him that in the year 1992 there was no industrial development in this area. He has also denied the suggestion that lands in this village did not have any potentiality for non-agricultural activity.

5.2. So far the respondent no. 2 is concerned, one Dilipkumar Kantilal Shah has been examined. At the relevant time he was Deputy Executive Engineer in the Building Department of Narmada Project. He has stated that he had seen village Santej and according to him, it is not situated on the Ahmedabad Kalol Highway. He has further stated that the crops obtained by the agriculturists were of rice, Bajri and Juvar. He has further stated that when the lands were acquired, they were not much used for agricultural purpose and that there was no industrial development. In the cross-examination he has stated that he did not have any knowledge that the area was declared as industrial area. He has also stated that villages Ranchrada, Vadsar, Ranchhodpura are touching village Santej. He has admitted in the cross-examination that there was no

industrial development of village Unali and Garodiya. He has also admitted that Santej is nearer to Sarkhej Gandhinagar Highway than the villages like Unali and Garodiya. Lastly, he has admitted that though he knew about what crops were being had by the farmers, he did not know what was the actual produce.

6. If the above evidence is carefully scrutinised, it clearly shows that so far Santej is concerned, it is near to Sarkhej - Gandhinagar Highway and also near to places like Garodiya, Vadsar, Ranchrada, Jaspur, etc. The lands of Santej are of the same quality as that of the lands in other villages. It further shows that the farmers took 3 crops round the year and the approximate income was Rs.20,000/= to Rs.25,000/= per Vigha. It also shows that there was all round industrial development in this area. Ofcourse, the respondents have tried to suggest that the industries have come up in this area only after acquisition of the land. However, this does not seem to be true because in his evidence witness for respondent no. 2 has stated that he did not have any idea when the area was declared as industrial zone or industrial area by the appropriate authority. In view of such categorical and cogent evidence, we fail to appreciate how the Reference Court came to the conclusion that the cogent, convincing and reliable evidence in respect of similarity between the lands situated at village Garodiya and other places and the lands in question of village Santej was not available and in absence of such evidence, it was not possible to have any comparison between these lands. When there is clear and cogent evidence of Bhavanji Jenaji Thakor on this aspect coupled with the surrounding circumstances on record, it was very clear that for the purpose of deriving correct market value reliance could easily be placed on the judgments delivered by this Court in respect of other lands which have been already acquired for the same purpose.

7. It may be noted here that this Court, on previous occasions, was required to determine the correct market value in respect of the lands which have been acquired for the construction of Narmada Canal and at different occasions it had dealt with this question and determined the correct market value of such lands.

7.1. The Division Bench of this Court comprising B.C. Patel and Sharad D. Dave, JJ. in the judgment rendered in the case of Bhothaji Sursnagji Thakor v/s. Special Land Acquisition Officer in First Appeal No. 1756 of 2001 and its allied matters dated

29th September, 2001, after taking into consideration various aspects, came to the conclusion that the lands situated at village Ranchrada were very similar to the lands of village Goradiya and these two villages were adjacent villages and hence amount of Rs.70/= per sq. mtr. determined as market value for lands at village Goradiya could also be awarded in the case of lands in Ranchrada and accordingly had decided that so far the lands in Ranchrada were concerned, their market value was Rs.70/= per sq. mtr. Before that, the Division Bench of this Court comprising J.M. Panchal and M.C. Patel, JJ, in the judgment delivered in First Appeal No. 1536 of 2000 and its allied matters dated 12th October, 2000, the question regarding determination of correct market value of lands situated at village Garodiya which were under acquisition for this very purpose had arisen. The Division Bench after discussing all the material aspects in detail, agreed with the award made by the Reference Court. The claimants of that case were awarded compensation on the basis of Rs.70/= per sq. mtr. being the market price of the land. Both these judgments have been heavily relied upon by the learned advocate for the appellants.

7.2. As stated above, considering the evidence on record in respect of the lands in question, we find that these lands are also very similar to the lands which have been the subject matter of the proceedings before the earlier Division Benches. There is no distinguishing feature pointed out by the Ld. AGP to establish that the present lands were of inferior quality and that no reliance could be placed on the judgments brought to our notice by the learned advocate for the appellants. In fact we have found that in some respects the present lands stand on better footing. However, considering the overall picture emerging from the record of the proceedings and in particular the evidence adduced before the Reference Court, we are of the opinion that an additional amount of Rs.55/- per sq. mtr., if awarded to the claimants, would meet the ends of justice. During the course of hearing, an effort was made by the learned advocate for the appellants to convince us that in certain cases the lands have already been granted N.A. permission and in respect of such lands higher compensation is required to be paid to the claimants. We, however, see no reason to treat these lands on better footing. The criteria for determining the market value of other lands would equally apply to these lands also and they cannot be put on a higher pedestal merely because they have been converted into N.A., considering the facts and circumstances of the case.

7.3. We, therefore, find that the Reference Court has committed grave error in awarding Rs.15/= per sq. mtr. only to the appellants inclusive of the amount already awarded by respondent no. 1. In our opinion, as stated above, the proper amount which could be awarded to the appellants would be Rs.70/= per sq. mtr. In view thereof, additional amount of Rs.55/= per sq. mtr. is required to be awarded to the appellants over and above the amount already awarded by the Reference Court.

7.4. This brings us to the question whether interest could be awarded for the amount admissible to the appellants u/S. 23 (2) and 23 (1-A) of the Act. The Reference Court relying on the decision of this Court rendered in the case of Special Land Acquisition Officer, Bharuch v/s. Jagdishbhai reported in 1997 (2) GLH (UJ 17-27) held that the appellants-claimants are not entitled to get the interest on the amount awarded under the aforesaid sections. It has, therefore, turned down the request of the appellants to award interest on such amount. Mr. Patel has challenged this view of the Reference Court by placing reliance on the Full Bench judgment of the Apex Court rendered in the case of Sunder v/s. Union of India reported in 2001(3) G.L.H. p. 446. The question before the Apex Court in that case was whether interest was payable on aggregate amount of compensation including the solatium. The Apex Court has held that expression "awarded amount" means all the amount of compensation worked out u/S. 23 of the Act. It has clarified the position further by saying that -

> "We make it clear that the compensation awarded include not only the total sum arrived at as per sub-section (1) of S. 23 but the remaining sub-sections thereof as well. It is thus clear from S. 34 that the expression "awarded amount" would mean the amount of compensation worked out in accordance with the provisions contained in S. 23 including all the sub-sections thereof."

In view of what has been laid down by the Apex Court in aforesaid decision, the conclusion reached by the Reference Court is required to be set aside and the appellants are required to be awarded interest at the rate of 12% p.a. on the amount awarded under Sections 23(2) and 23(1-A) of the Act. The appellants have claimed additional amount of Rs.60/= per sq. mtr. but in view of the foregoing discussion, additional amount of Rs.55/= per sq. mtr. can be awarded as compensation to the appellants. We, therefore, direct the respondents to

pay to the appellants compensation of additional amount of Rs.55/= per sq. mtr. together with all the permissible benefits available to the appellants under the Act including the amounts awardable u/S. 23 (1-A) and Section 23(2) of the Act.

7.5. The respondents are directed to deposit the additional amount within two months from the date of receipt of the writ of this order before the trial Court.

8. The net result is that the appeals are partly allowed with no order as to costs.

R & P be sent back to the trial Court immediately.

[KSHITIJ R. VYAS, J.]

[AKSHAY H. MEHTA, J.]

* Pansala.